

No. 1-10-2529

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 00 CR 14918
)	
DARNELL BRADLEY,)	Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Presiding Justice R. E. Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Although defendant was not admonished regarding mandatory supervised release at the time he pleaded guilty, the trial court properly dismissed defendant's post-conviction petition where the plea was made in 2001 and where defendant has been released from custody.

¶ 2 Defendant Darnell Bradley appeals from an order granting the State's motion to dismiss his petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2008)). On appeal, defendant contends that his petition made a substantial showing that his due process rights were violated when, at the time he pleaded guilty, the trial court failed to

admonish him that a period of mandatory supervised release (MSR) would be added to his negotiated prison term.

¶ 3 For the reasons that follow, we affirm.

¶ 4 In 2001, defendant pleaded guilty to aggravated battery with a firearm and was sentenced to 13 years in prison. It is undisputed that defendant was not admonished by the trial court that a three-year term of MSR would follow his sentence. Defendant did not file a motion to withdraw his guilty plea and did not take a direct appeal.

¶ 5 In 2006, defendant filed a *pro se* post-conviction petition. In the petition, defendant challenged the addition of MSR to his sentence, claiming that he had been denied the benefit of the bargain and that his constitutional rights to due process and fundamental fairness had been violated. Defendant cited *People v. Whitfield*, 217 Ill. 2d 177 (2005), and *Santobello v. New York*, 404 U.S. 257 (1971), and asserted that the matter had "just arisen to [his] knowledge." As relief, he sought to have his sentence reduced by three years, the equivalent of the MSR term.

¶ 6 The trial court appointed counsel, who filed a Supreme Court Rule 651(c) (eff. Dec. 1, 1984) certificate of compliance, indicating that the *pro se* petition adequately presented defendant's claims. The State thereafter filed a motion to dismiss, which was granted by the trial court.

¶ 7 Defendant completed his sentence and was released from custody in June 2011.

¶ 8 On appeal, defendant contends that his petition should not have been dismissed because he has set forth a substantial showing of a constitutional violation. Specifically, he argues that by failing to admonish him regarding MSR, the trial court denied him due process at his guilty plea proceedings. Because defendant has been released from prison, as relief, he requests that we remand for an evidentiary hearing at which the trial court can decide whether to strike the MSR term.

¶ 9 Our review of the grant of a motion to dismiss a post-conviction petition is *de novo*. *People v. Porm*, 365 Ill. App. 3d 791, 792 (2006).

¶ 10 Under *Whitfield*, a defendant who is not informed of the required MSR term at the time he pleads guilty is entitled to the benefit of the bargain by having his prison sentence reduced by the length of the MSR term. *Whitfield*, 217 Ill. 2d at 195, 205. However, in *People v. Morris*, 236 Ill. 2d 345, 366 (2010), our supreme court determined that *Whitfield* announced a new rule that will not be applied retroactively to cases on collateral review. Specifically, *Whitfield* may only be applied prospectively to cases where the defendant's conviction was not finalized prior to December 20, 2005, the date *Whitfield* was announced. *Morris*, 236 Ill. 2d at 366.

¶ 11 Here, defendant's conviction was finalized in 2001, years before *Whitfield* was decided. Accordingly, defendant is not entitled to application of the rule announced in that case, and dismissal of defendant's petition was proper. See 725 ILCS 5/122-5 (West 2008).

¶ 12 We are mindful of defendant's argument that the *Morris* decision is not fatal to his case. Defendant argues that a guilty plea entered without MSR admonishments lacks a knowing, voluntary character, and that this principle survives recent developments in benefit-of-the-bargain law, including *Morris*.

¶ 13 Even if we were to find merit in defendant's position, we would not be able to grant defendant the ultimate relief he is seeking. Defendant's sentence has been discharged. As such, he has requested that his case be remanded for an evidentiary hearing, at which the trial court would decide whether to strike the term of MSR. Courts do not have authority to strike MSR terms imposed under section 5–8–1(d)(2) of the Unified Code of Corrections (730 ILCS 5/5–8–1(d)(2) (West 2008)). *Porm*, 365 Ill. App. 3d at 795; *People v. Russell*, 345 Ill. App. 3d 16, 22 (2003). Therefore, a remand to the circuit court for an evidentiary hearing would be futile,

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and defendant's claim is moot. *Porm*, 365 Ill. App. 3d at 795. We affirm the dismissal of defendant's petition.

¶ 14 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.